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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,746	02/15/2001	Robert G. Stevens	ARIBP036	2175
21912 7590 11/17/2011 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014				
EXAMINER TINKLER, MURIEL S				
ART UNIT 3691		PAPER NUMBER		
NOTIFICATION DATE 11/17/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@ip-patent.com

Office Action Summary**Application No.**

09/783,746

Applicant(s)

STEVENS, ROBERT G.

Examiner

MURIEL TINKLER

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1, 4-16, 18, 19 and 22 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1, 4-16, 18, 19 and 22 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date: ____

DETAILED ACTION

This application has been reviewed. The status of the claims are as follows: claims 1, 4-16, 18, 19 and 22 were previously pending; no claims have been added, withdrawn or cancelled; therefore, claims 1, 4-16, 18, 19 and 22 are currently pending and have been examined. The rejection(s) are as follows.

Reopen After Appeal Brief

In view of the Appeal Brief filed on 2/6/06, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Alexander Kalinowski/

Supervisory Patent Examiner, Art Unit 3691

Comment

1. The Applicant has been re-opened after an appeal brief because it was determined that an adequate and clear disclosure of an "auction" should be provided in the rejection of the independent claims. The Examiner has added said clarity by use of Ausubel (US Patent 6,021,398).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 8, 9, 10, 15, 16, 18, 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Giovannoli (US Patent 5,758,328) in view of Ausubel (U.S. Patent No. 5,905,975), hereafter referred to as Giovannoli and Ausubel respectively.

4. Regarding claims 1, 9, 18 and 22, Giovannoli discloses:

5. A method for soliciting and receiving bids, for goods or services necessary to satisfy a spot need of a buyer (Abstract), comprising:

- a. A computer connected to the supplier database (fig. 1, "System Central Computer")

- b. receiving a request to procure goods or services that are required to satisfy the spot need of the buyer (fig. 2A, block 3 "The buyer requests a quotation"),
- c. wherein the request includes information identifying a type of good or service being procured by the buyer, and wherein the request includes geographic information; The Examiner points out that the specification specifically discloses this limitation on page 5 (lines 15-20), "In this embodiment, the spot request from the buyer may further include information identifying a geographic location associated with the goods or services being procured by the buyer." Based on this section of the specification, the Examiner has interpreted this limitation to mean that the request includes the buyers delivery information. Giovannoli discloses that the request includes the buyers delivery information (fig. 7 "Ship Destination"—discloses buyer information which could comprise the request for quote packet, see also column 5, lines 34-36)
- d. querying, using a processor, a database (a vendor's product database, see fig. 4 "Product Database") of information representing the capabilities of suppliers to deliver goods and services to geographic areas and automatically selecting as potential bidders for an auction those suppliers whose capabilities satisfy at least a portion of the request (see column 2, lines 35-51 and column 4, lines 36-49);

- e. electronically notifying each of the potential bidders of an opportunity to submit a bid to satisfy all or part of the buyer's purchase request; conducting the auction that includes electronically accepting bids from those potential bidders that each provide one or more bids before a bidding deadline expires and not accepting the bids after the bidding deadline expires; and automatically selecting one or more winning bidders in accordance with the received bids (see fig. 2A, block 4, "The quotation system processes the request by selecting a class of vendors who sell the requested product(s) and meet the filter requirements of the buyer, vendor, and the quotation system. The quotation system then makes available the request(s) to each selected vendor via file transfer protocol (FTP) or e-mail."

Giovannoli does not disclose the word auction. However, Ausubel teaches the act of: querying, using a processor, a database (fig. 2 #62) of information representing the capabilities of suppliers (fig. 2 #61) to deliver goods and services to geographic areas and automatically selecting as potential bidders for an auction those suppliers whose capabilities satisfy at least a portion of the request (column 13, line 49 through column 14, line 2). Therefore, it would have been obvious to a person having ordinary skill in the art at the time this invention was made to modify Giovannoli to include ability to accept the lowest bidder in an auction format because auctions were well known at the time this invention was made.

6. Regarding claim 8, Giovannoli discloses: The method of claim 1, wherein the electronically notifying further comprises sending an electronic mail message to each of the selected bidders (see column 2, line 35 through column 3, line 1 and fig. 2A, block 4, "The quotation system then makes available the request(s) to each selected vendor via file transfer protocol (FTP) or e-mail").

7. Regarding claim 10, Giovannoli discloses: The method of claim 1, further comprising posting information about the request on a web page in the spot market place (see column 4, lines 1-9).

8. Regarding claim 15, Giovannoli discloses: The method of claim 1, wherein the selecting further comprises notifying all bidders who posted bids about their status (the system uses the internet and web pages to keep the buyers and bidders up to date with information, see column 4 (lines 1-9 and 21-26).

9. Regarding claim 16, Giovannoli discloses: The method of claim 1, wherein [[the]] selecting **the winning bidders** further comprises notifying the one or more winning bidders of an award by electronic communications (see fig. 2A, block 4, "The quotation system then makes available the request(s) to each selected vendor via file transfer protocol (FTP) or e-mail).

10. Regarding claim 19, Giovannoli discloses: The system of claim 18, wherein each of the bidders ("Buyer") is electronically coupled (via the "Internet Computer Network") to a spot marketplace ("System Central Computer", see fig. 1).

11. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giovannoli and Ausubel as applied to claim 1 above, and further in view of Admitted Prior Art.

12. Claims 4-6, Giovannoli fails to teach a predefined amount of time for completion of the steps of automatically selecting, electronically notifying and electronically selecting a winning bidder. Giovannoli further fails to teach including a bidding time period and a bidding deadline in the electronic communication, and instructing selected vendors to post bids before said deadline.

13. Official Notice is taken that defining the length of time of the auction process, having a bidding time period and a bidding deadline, and the notification of said deadlines is old and well known in the art. Since Applicant failed to adequately challenge Examiner's statement of what is old and well known in the art in a timely manner, as cited in the Office Action dated 9/28/05, the statement of Official Notice is considered admitted prior art. It would have been obvious to one of ordinary skill in the art at the time the Applicant's invention was made to modify the teachings of Giovannoli to include in the method the steps of defining the timeframe under which the steps of automatically selecting, electronically notifying, and electronically accepting a winning bidder must be completed, and of including in said electronic notifications a bidding time period and a bidding deadline, and instructions to post bids before said deadline, as steps may be completed within any predetermined time to accommodate the needs of the buyer, improving the usefulness and convenience of the method. Electronic

notification of said deadlines, and instructions for bidders to place bids before said deadlines informs the bidder, making the method easier to implement.

14. Claims 7 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giovannoli and Ausubel as applied to claim 1 above, and further in view of Walker (US Patent No. 5,794,207), hereafter referred to a Walker.

15. Claims 7, Giovannoli fails to teach the buyer request may be posted on bulletin boards or web pages. Walker teaches potential sellers are selected by meeting certain conditions set forth by the buyer. Walker teaches the seller submits a counteroffer to the buyer thereby facilitating the buyer to. choose the best counteroffer as the winner of the contract (Figures 5-11 and Column 18 Lines 24-31). Walker further teaches the buyer's request may be posted on bulletin boards or web pages. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Giovannoli to include posting the request on bulletin boards or web pages because posting a single description in a central, universally accessible location such as the internet or a bulletin board would improve the efficiency of the system.

16. Regarding claims 11 and 12, Giovannoli does not disclose including a bidding time period and a bidding deadline in an electronic communication or that the electronically notifying further comprises instructing the selected bidders to post bids before a bidding deadline. Walker discloses a method and apparatus for facilitating and controlling a buyer driven market, where prospective buyers of goods and services

submit a request for said goods and services, which is then processed and electronically mailed to potential seller groups (column 18 lines 15-25). Walker teaches the request for proposal (RFP) information being sent to potential sellers, wherein the RFP information includes an expiration date, after which the RFP becomes expired, and the contract may no longer be binded (column 17 lines 43-47: the expiration is set. An expired CPO is considered equivalent to "not accepting bids"). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Giovannoli to include the expiration date feature of Walker because the environments of Giovannoli and Walker are similar, and it feature of Walker which allows for RFP expirations is desirable, so that an buyer is not bound to purchase an item after a time when the item is no longer needed. The addition of this feature would provide the same benefits in the context of Giovannoli, and one of ordinary skill in the art would recognize that the results are predictable.

17. Regarding claims 13 and 14: Giovannoli, Walker ('207), Fedor, and Sheth fail to teach instructing the selected bidders to post sealed bids, and instructing selected bidders to post partially open bids in which bidders may revise bids until the deadline passes. However, Ausubel discloses a computer implemented system and method of executing an auction, in which bids are submitted and processed, and a winner selected. Ausubel also teaches sealed bid auctions as a method of conducting the auction, and a method of bidding where bidders are allowed to continuously revise their bids until the close of the auction. It would have been obvious to one of ordinary skill in

the art at the time the Applicant's invention was made to modify the teachings of Giovannoli and Walker ('207) to include such methods for the bidding process because they are fair, organized, commonly used methods of the auction art, and the addition of the features would achieve predictable results.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MURIEL TINKLER whose telephone number is (571)272-7976. The examiner can normally be reached on Monday through Friday from 8 AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Muriel Tinkler/
Primary Examiner, Art Unit 3691